IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 3RD DAY OF APRIL 1998.

BEFORE

THE HON'BLE MR.JUSTICE TIRATH S.THAKUR

WRIT PETITION NO.2340/1998

BETWEEN:

CONSOLIDATED COFFEE LIMITED,
a Company registered under the
Companies Act, 1956, and having
its registered Office at Pollibetta,
South Kodagu, Karnataka, represented
by its Vice President Finance and Co., Secy.,
Mr.P.T.Rengarajan.

..PETITIONER

(By Sri K.G.Ragavan, Advocate)

AND:-

1. State of Karnataka,
represented by its Secretary to
Government, Forest Department,
M.S.Buildings,
Dr.Ambedkar Veedhi,
Bangalore-560 001.

2. The Principal Chief Conservator of Forests,
8th Floor, Aranya Bhavan,
18th Cross,
Malleswaram,
Bangalore-560 003.

3. The Conservator of Forests,
Kodagu Circle,
Madikeri.

4. The Deputy Conservator of Forests,
Post Box.No.30,
Mangalore Division,
Mangalore.

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5. The Range Forest Officer,
Uppinangadi Range,
Uppinangadi.

..RESPONDENTS

(By Sri. Ashok Naik, HCGP)

* * *

This Writ Petition filed praying to Quash the Letter of R-5 dt.9.7.97 vide Annex.'W'. Quash the letter of R-5 vide Annex-Y. dt.1.8.97 addressed to the petitioner. and etc.

This Writ Petition coming on for orders, the same having been heard and reserved for pronouncement of order, the Court made the following order:-

ORDER

Grant of a vast extent of reserved forest land on a princely sum of Rs.30 per acre per annum is the hall mark of this case. What is interesting to note is that the nature of the grant and the indulgent terms on which the same was made notwithstanding the petitioner-company failed to cultivate cocoa in the area which ostensibly was the only justification underlying the transfer of such valuable government property on a long term basis. Proceedings for resumption of the uncultivated area have been called in question by the petitioner-company on a variety of grounds to which I shall turn but only after the

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material facts are briefly sated.

2. An extent of 500 acres of forest land in the Shiradi Shishila Reserve Forest, of the Uppinangadi Range, Mangalore Division, was granted to the petitioner on lease for cultivation of Cocoa interms of a Government order dated 11th May 1971. The area was subsequently shared equally by the petitioner and M/s.Coffee Lands Ltd., in which the former holds a substantial stake. Out of 250 acres that fell to the petitioner's lot 80 acres, was covered by a lease-deed dated 14th of July 1972 whereas the balance 170 acres was covered by a similar instrument executed between the parties on the 7th of January, 1978. The terms of the Government Order inter alia provided that the land granted to the petitioner shall within a period of five years be utilised by the petitioner for grow-ing and cultivating cocoa in default whereof, the lease was liable to be terminated except in case the default was for circumstances beyond the control of the Company. Clause (k) contained in the lease deeds made the following significant provisions:-

> " The lease is liable for termination if the Company becomes de-funct or the company does not act according to the conditions of lease or the lessee does not show satisfactory progress. But the lessee shall not claim any compensation or damage from Government on that account and no damage or compensation will be paid."

3. In the event of any difference of opinion arising between the parties as to the interpretation of any of the clauses contained in the lease-agreement, the decision of the Chief Conservator of Forest was made final and finding on the leasee who was given a right of Appeal to the Government against any such dicision by clause (R) of the lease deeds.

4. The petitioner's case in this petition is that it had in accordance with the provisions contained in the Government Order and the lease deeds executed between the parties, grown cocoa in the entire area measuring 250 acres with in the stipulated period of 5 years, out of which an area of 170 acres could not support the crop on account of heavy soil erosion and felling of shade trees by the forest department. Its further case is that despite attempts made by the petitioner to help the Soil recuperate and regenerate, it had succeeded in growing Cocoa only in an area of 53 acres, In the rest of the area either there is no crop growing or other crops like Cashew, Lemon grass and Pepper have been planted. The forest department was aware of the violation of the conditions of the lease and had taken note of the same from time to time and even brought them to the notice of the petitioner. This is evident from the correspondence exchanged between the petitioners some of which has been

placed on record, and to which I shall briefly refer in the paras following here after.

5. In May 1989, the Deputy Conservator of Forest Mangalore, by his letter dated 20th of May 1989, directed the Range Forest Officer to take over the untilised part of the forest land granted to the petitioner as measured by the Departmental surveyor. A meeting was thereafter held on 10.8.1990 between the Officers of the Forest Department and the representatives of the petitioner Company in which the extent of un-utilised land was also discussed. Since the extent of land which had remained unutilised was not admitted by the petitioner company, it was decided to take up a joint survey of the cocoa plantation by the forest Department along with the company officials. An Expert Committee of Forest Department Officers was to visit these areas and give their opinion regarding the suitability of the area for the purpose for which it was granted. The minutes of the meeting also noticed the violation allegedly committed by the petitioner/ company in that it had raised crops other than cocoa in the Leased area in violation of the conditions' of the lease agreements. The company was also accused of having violated the lease agreements by constructing stone buildings, inside the leased area without the permission of the authorities.

6. The Joint Survey was in due course taken up which revealed that out of a total of 251 acres, the petitioner had brought an area measuring only 56.40 acres under cocoa cultivation. Out of the remaining area 96 acres had been utilised by the Company for other crops like Pepper, Cashew, Lemon grass etc, which did not promote the growth of cocoa. Similarly another chunk of 98.6 acres of uncultivated land was found to have thick growth of Bamboo xylia with sparse growth of Nandi, Terminals etc with no evidence of any attempt have been ever made at any stage to grow cocoa in the same. On the basis of the findings recorded by the joint survey team, the Deputy Conservator of forest by a communication dated 25th of April 1991, pointed out the violations committed by the company and asked it to explain within seven days of the receipt of the said letter as to why the area left uncultivated as also the area in which the company had cultivated crops other than Cocoa should not be taken over by the department by forfeiting the lease. On receipt of the said notice all that the company pointed out in its communication dated 4th of May, 1991, addressed to the Deputy Conservator was that the Company's representatives had not been allowed to make certain observations in the sketch prepared on the basis of the Joint survey. A request for issuing a copy of the

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sketch was made to enable them to make their remarks with a further request to the respondents to indicate the basis of the observations made in the show cause notice that there was no evidence to suggest that any crop had been grown in the area referred to above. This was, followed by the Deputy Conservator's order dated 24th of July 1991 to the address of the Assistant Conservator of Forest asking the latter to resume the areas that remained uncultivated as also the area that had been utilised for cultivation in contravention of the conditions of the lease agreements. Aggrieved by the said instructions, the petitioner company appears to have made a detailed representation dated 1st of August 1991, to the Hon'ble Minister for Forests in which the company admitted its failure to establish cocoa cultivation in a large area granted to it. The Representation it is significant to note acknowledged the receipt of the notice served upon the company in May 1989 to show as to why the unutilised area as also the area that had been utilised for other crops should not be resumed. It is also note worthy that the Representation did not raise any objection regarding the findings recorded on the basis of the joint survey. On the contrary it made the following important remarks:-

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"Though the Company put its best efforts, it did not succeed in establishing Cocoa in large areas.

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Due to the various technical and related factors narrated in the foregoing paragraphs, the area has not responded at all to CCL's efforts (as evidenced by the fact that CCL could realise only 12668 kgs. of Cocoa over a period of 20 years) and CCL has been placed in a piquant situation where the 80 acres block (with effective Cocoa cultivation in 50 acres) yielded marginal income while the second block of 170 acres could yield no income whatsoever."

The Representation then went on to seek special permission of the Government to grow foreign exchange saving crops like rubber and export oriented crops based on 100% export commitment of the petitioner and requested for the contemplated resumption proceedings to be dropped.

7. On consideration of the matter, the Government by its order dated 5th of August 1992, ANNEXURE-O to the writ petition, informed the petitioner company that it had violated the conditions stipulated in the lease agreements because of which the Government

had decided to cancel the lease in respect of the entire area and to resume the forest land. The petitioner was given a 12 months notice to remove the moveable property brought in to the forest and to pay the arrears of lease rent with interest failing which the same were to be recovered by initiating appropriate proceedings. The petitioner responded to the said order in the form of a Representation dated 19th of October, 1992 in which it reiterated its request for cultivation of alternate crops as it claimed to have incurred an expenses of 23 laks on the venture undertaken by it.

8. This was followed by another Representation dated 12-6-1993 in which the petitioner acknowledged its failure in growing cocoa in large areas granted to it though it attributed the same to difficulties and circumstances beyond its control. In para 6 of the said representation the petitioner made the following statement:-

> " We took the opportunity of reviewing our Cocoa project in 1992 and finding that there are basic constraints in this area for successful cultivation of Cocoa, we filed a memorandum before the government to permit us to plant Rubber and Aromatic plants with an eye on foreign market and

and also to recoup our losses to the tune of about Rs.23 Lakhs. We have received no response to our request.

9. The request for permission to raise the alternate crops was also reiterated and permission to retain the lease area for 99 years sought.

10. In April 1994, the principal Secretary, to the State Government environment, ecology and forest visited the leased area and on the basis of observations made by him recorded a note on the file in which it was inter alia stated that the cocoa cultivation was confined only to 52 acres of land and that there was a luxuriant growth of trees in the rest of the areas with the density arranging from 0.6 to even 1. On the basis of the discussions held with the Managing Director of the Company the petitioner was asked whether it was agreeable to certain terms and conditions stipulated in communication dated 30th of April, 1994 to enable the Government to consider the company's proposal for continuing the lease. The petitioner appears to have vascilated in so far as the acceptance of the terms suggested by the Government were concerned till 1997 when by its letter dated 18th of August 1997 ~~it~~

conveyed its preparedness to protect and maintain the area as per the regimen stipulated by the Forest Department but wanted the details of the proposed regimen. In the meantime the Government appear to have taken a decision on 28th of January 1997 to take over the unutilised portion of the leased area. Following the said decision directions were issued by the Government to the principal Chief Conservator of Forests by its order dated 17th of September 1997. Pursuant to the said direction, the petitioner was called upon th deliver possession of the area that remained unutilised for the cultivation of cocoa. Aggrieved the petitioner has filed the present writ petition assailing the validity of the communications issued to it on a variety of grounds.

11. In the objections filed on behalf of the Respondents, the decision to resume the entire extent of the forest area which is not utilised by the petitioner company for cocoa cultivation has been justified on the ground of the failure of the Company to abide by the terms of the lease agreements. It is pointed out that out of a total of 250 acres the petitioner had planted cocoa, only in an area of 56.04 acres and utilised the rest for cultivation of other crops that were impermissible

under the lease agreements. The respondents have given the break-up of the remaining area cultivated and uncultivated as under:-

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| 1) Pepper Plantation | : | 65.50 Acres |
| 2) Cashew Planation | : | 16.50 Acres |
| 3) Lemon Grass | : | 14.00 Acres |
| 4) Uncultivated area | : | 98.60 Acres |
| Total | : | 194.60 Acres |

12. It is pointed out that upon the failure of the company to abide by the terms of the lease agreements, the Respondents had issued a Notice to it pointing out the violations and that the matter had been discussed in the meeting held on 10th of August 1990 in which the violations committed were also brought to the notice of the company. It is stated that the experts in the field had opined that cocoa could have been successfully cultivated if only the petitioners had taken care of the agronomic practices and followed the same with copious irrigation during summer months. It is urged that the Government had upon consideration of the matter, decided to resume the area that remained unutilised for cocoa cultivation and issued direction in terms of the Government Order dated 17th of September 1997. The averments made by the petitioner that termination

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was without notice and arbitrary have been refuted.

13. Mr.Raghavan, learned counsel for petitioner made a three fold submission in support of the petition, Firstly he contended that in terms of Government order dated 11th May 1971, and the lease agreements the lease granted to the petitioner could be cancelled prematurely only if the petitioner failed to bring the area under cocoa cultivation without reasonable cause. The termination of the lease, argued Mr.Raghavan, was impermissible, where the failure of the petitioner was attributable to reasons beyond its control. There was according to the learned counsel no finding to the effect that the petitioners' failure was not for reasons beyond its controll which rendered the decision to resume the uncultivated area arbitrary. Reliance was in this connection placed by him upon the decision of the Supreme Court in M/s.DWARKAI DARFATIA AND SONS .v. BOARD OF TRUSTEES OF THE PORT OF BOMBAY / AIR 1989 S.C. Page-1642/1 Secondly, it was c-ontended that the petitioner ought to have been give a specific notice to the effect that its default was not for reasons beyond its control to enable the Company to establish that it was not so. No such notice having been issued the resumption of the lease was according to Mr.Ragavan unsustainable prarticularly when the resumption was not preceded by an order terminating the lease. Thirdly, it was contended that even if there was any breach of the

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terms of the conditions governing the lease, the same had been waived by the Respondents by accepting rent for the leased area upto the year 1998. It was argued that a cheque for Rs.7,500/- had been received by the Deputy Conservator of Forests Mangalore, representing the lease rent for the year 1997-98. Acceptance of the said amount constituted waiver of the alleged violations and disentitled the Respondent from resuming the area according to the learned Counsel. It was also argued at some stage that the order dated 17th September 1997 issued by the Government was not in accordance with the requirements of Art.166 of the Constitution and the Conduct of Business Rules, in as much as the same was not issued in the name of the Governor. Mr.Raghvan did not however pursue that argument for long, and rightly so, because the provisions of Art.166 have been held to be only directory in nature by the Supreme Court in DATTATRAYA MORESHWAR.vs. STATE OF BOMBAY AND OTHERS. 89 SC 1642 and R.CHITRALEKHA & ANR. vs. STATE OF MYSORE & ORS. AIR 1964 SC 1823. What is important is whether the Government had taken a decision culminating in the issue of the order, under the signitures of an officer authorised by the Rules of Business to authenticate ~~xxy~~ the same. A perusal of the Government files produced by Mr.Naik discloses that order dated

17th September 1997 was issued after the proposal to compell the lease was approved by the Minister competent to take that decision under the Rules of Business. The form of the order, would therefore be of little significance nor can a departure from the prescribed form provide a cause of action to the petitioner to assail the validity of the order only on that ground.

14. Coming then to the first ground urged by Mr. Raghavan, para 10 of the Government Order dated 11th May 1971, whereby the lease in question was sanctioned in favour of the petitioner stipulated that the land in question shall be utilised by the company for the purpose stipulated within a period of five years, failing which the same shall be liable to be cancelled unless the default was due to circumstances beyond the control of the company. Para 12 of the said orderfurther provided that the lease shall be liable for termination if the Company became defunct or did not act according to any of theconditions of the lease or the lessee did not show satisfactory progress. On a harmonious construction of these conditions, it is evident that the lease granted to the petitioner was liable to be terminated not only when the company became defunct or failed to comply with the conditions of lease but also in

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cases where the lessee did not show satisfactory progress. Sufficice it to say that the power to terminate the lease in the event of the failure of the petitioner to bring the entire area under cultivation was not and could not possibly be disputed by the petitioner. What was argued was that the petitioner's failure was attributable to reasons beyond its control which disentitled the Respondents from terminating the lease. It was contended by Mr.Raghavan that the leased area when it was originally shown to the petitioners was full of lush green vegetation and dense forest cover but by the time the area was handed over the entire tree growth had been removed rendering the land barren and dry. This was according to the learned Counsel the primary reason which rendered it difficult for the petitioner to bring the entire area under cultivation and being a reason beyond the controll of the petitioner/was sufficient to render the resumption order legally bad. There is however no material on record before me to show even primafacie that the tree growth existing on the date of the execution of the lease agreements was removed by the forest department, no matter under the lease agreements, the forest authorities could have done that, if they so desired. That apart there is nothing on record to show that the petitioner had at any stage objected to the removal of the trees which according

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to the petitioner was the root cause of all its difficulties. On the contrary, the petitioners' case in its represehtation dated 19th of October, 1992, was that the Government had erred in giving to the petitioner land bereft of any shade trees contrary to the basic cannns of the cocoa plantation as the said plantation could survive only in the shade and not otherwise. It is not uncommon to find such ironical situations also, where the beneficiary convinently turns round to question the wisdom of the behefactor even during the continuance of the benefit being employed by him. That is precisely where the Petitioner's stance amounts to. But then what makes the stance look more like a pretence is the fact that at no stage after the land was handed over to the petitioner and till ~~xxxx~~ after the expiry of five years was any objection murmured to the effect that the trees had been removed from the land adding to the petitioners woes.

15. The justification given by the petitioner for its failure to cultivate cocoa on the ground of removal of the trees from the area thus appears to be an after thought having been advanced belatedly in its Representation dated 1st of August 1991.

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The failure of the petitioner to seriously canvass the socalled difficulties faced by it and the alleged circumstances beyond its control preventing it from undertaking the cocoa cultivation in the entire area lends sufficient credence to that view.

16. That apart, the Report submitted by the Special Secretary on the basis of his spot inspection, shows that the area had a luxuriant and dense growth of trees which could sustain cocoa planatations and provide the much needed shade to them if only any serious effort for cultivation was made by the petitioner. The argument that the Government did not at any stage address itself to the justification advanced by the petitioner for its failure to cultivate cocoa is also not supported by the record. A perusal of the files produced by Mr.Naik, in the course of the hearing shows that the Government were fully cognizant of the existence of the shade trees in the area which belied the petitioner's case that cocoa cultivation had failed on account of the removal of the tree growth by the Forest Department. It is in the circumstances difficult to accept the submission made by Mr.Raghavan, that the Government had failed to keep the relevant considerations in view while deciding to resume the area that remained uncultivated.

17. I am also not impressed by the submission made by Mr.Raghavan that the Government could not have decided to resume the uncultivated land without first terminating the lease granted to the petitioner. A perusal of the record produced by Mr.Naik shows that the decision taken by the Government was to cancel the lease in respect of the area that remained unutilised for cocoa cultivation. It is not therefore as though the state Government proposed to resume the area leaving the lease in respect of the same subsisting. The decision of the Government is clearly discernible from the record. Even otherwise the decision to resume the uncultivated portion of the area would necessarily imply an intention to put an end to the lease in respect of the said area. No fault can therefore be found with the direction issued by the Government for resumption based as it was on its decision to cancel the lease in regard to the area directed to be resumed.

18. Equally untenable is the alternative submission made by Mr. Raghavan that the petitioner ought to have been given a further notice informing it, about the proposed termination of the lease on account of its failure to cultivate cocoa in the entire area. It is not in dispute that the petitioner had received

notices dated 25th of April 1991 and 5th of August 1992 whereby the petitioner was informed about the default committed by it and called upon to show cause why action should not be taken by the Department for forfeiture of the lease. Notice dated 25th April 1991 issued by the Deputy Conservator of Forests specifically gave an opportunity to the petitioner to file its reply in the light of the findings returned by / the joint survey team, It is also not disputed that the petitioner filed its reply to both these communications in which it not only admitted its failure to cultivate cocoa in the entire area but sought the permission of the state Government to shift to cultivation of other crops on account of the failure of the crop in such area despite efforts allegedly made by the Company. The Representations made by the petitioner and the joint survey report in fact substantially reduce the area of controversy. The Joint Survey Report the correctness whereof was not disputed by the petitioner, establishs that the cocoa cultivation was undertaken by the petioner only in an area of 56.40 acres whereas rest of the area was either totally uncultivated or utilised for cutivation of other crops which were not permissible under the lease agreement. A reading of the Representations filed by the petitioner also bear testimony to

the fact that an area of 98.60 acres had remained totally untouched for cultivation whereas the other areas had been utilised for growing crops like pepper, cashew and lemon grass which were not permitted in terms of the lease agreement. It is not therefore a case where the petitioner had no notice of the possible ground on which the Respondents proposed to take action. On the contrary, it is a case where the petitioner was not only given a notice to show cause but was associated with the process of physical verification of the site conditions. In the absence of any challenge to the joint survey report and in the light of the show cause notice dated 25th of April 1991 and the reply submitted by the petitioner to the same it cannot be said that the petitioner has been prejudiced in any manner on account of the absence of a specific notice to it.

19. Coming then to the third and the only other submission urged on behalf of the petitioner namely that the petitioner had deposited the lease rent for the year 1997-98 so as to result in a waiver of the violations committed by it, I find no merit even in the same. In order to constitute waiver it must be satisfactorily established that the Authority who has taken action or proposed to take action on the basis of the violations alleged against the petitioner

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had acted in a manner imcompatible with its intention to take any such action to its logical conclusion. The deposit of a sum of Rs.7,500/- with the Deputy Conservator of Forests as rent for the year 1997-98 does not in my opinion constitute a circumstance so destructive of the respondents intention to take over the uncultivated area as to constitute a waiver of the violations reported against it. Besides, the petitioner has not admittedly surrendered the area and may be liable to pay rent for its continued occupation, in the nature of compensation for unauthorised use and occupation till such time it vacates the same. We can also not lose sight of the fact that the decision to resume was confined to the area which remained uncultivated. This would imply that the rent for an area of 56.40 acres over which the petitioner had cultivated cocoa would continue to be chargeable and could have been received by the Deputy Conservator. Receipt of a composite cheque for both the areas i.e., cultivated and uncultivated cannot therefore constitute waiver so as to disentitle the Respondents from resuming the uncultivated part of the leased area.

20. There is another circumstance that dissuades me from interfering with the impugned order

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of resumption. The facts as tetailed above show that whatever the reason for the failure of the cocoa plantation, the experiment has not succeeded beyond 56.40 acres. Even the petitioner accepts that position as is clear from its repreated requests made to the Government to permit cultivation of other Crops. That being so the question of the petitioner succeeding in its endeavour after nearly two decades does not arise. The entire purpose underlying the grant is therefore frustrated and no usefull purpose wo would be served by allowing the contraversy to drag on any further. A substantial part of the area is even according to the petitioner, totaly uncultivable. This area measures around 98 acres i.e., nearly 40% of the total area. There is in regard to that area no possible explanation forth coming from the petitioner even to make out an arguable case in its favour. As regards the rest, the petitioner appears to be benefiting from other corps planted by it contrary to the purpose of the leases and directions issued from time to time. In the circumstances it is not a fit case in which this court ought to interfere.

21. In the result there is no merit in this writ petition which fails and is hereby dismissed with

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costs assessed at Rs.2,000/-

Sd/-
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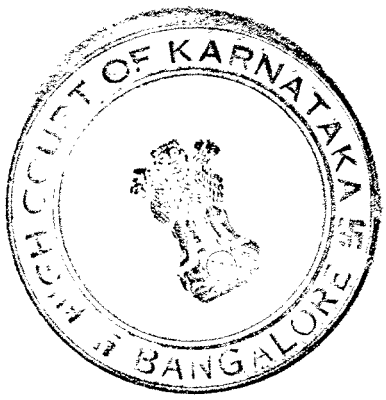


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